IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

Crl.MC.No. 2946 of 2007()

S.T.963/2003 OF Judicial Magistrate of the First Class-II,THRISSUR

PETITIONER:

A.S.DIVAS, S/O.ALAKKAL SUKUMARAN,
NATTIKA,THRISSUR.

BY ADV. SRI.C.HARIKUMAR

RESPONDENTS:

---

1. N.R.SUBASH, S/O.RAGHAVAN,
PERINGOTTUKARA,THRISSUR.

2. STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR,HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.DILIP J. AKKARA
PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 24/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.2946 of 2007

Dated this the 24th day of September 2007

O R D E R

The petitioner faces indictment in a prosecution under Section 138 of the Negotiable Instruments Act. The same ended in a judgment of acquittal. Appeal was preferred before this court. Leave for appeal was granted. Delay was condoned. Appeal was admitted. The appeal was disposed of on merits long later by judgment dated 6/2/2007 in Crl.A.No.2067/2003. It was not reported to the court by either side that the matter was settled and the offence has been compounded. Another Bench of this court by Annexure A2 judgment in the said appeal took the view that the judgment of acquittal is not justified and proceeded to pronounce a verdict of guilty. The petitioner was found guilty, convicted and sentenced to undergo imprisonment till rising of court and to pay an amount of Rs.46,000/- by way of compensation. A default sentence of S.I for a period of three months was also imposed.

2. The petitioner and the complainant have now come before this court. They submit that they had, long prior to

Annexure A2 judgment, settled the dispute. They, therefore, pray for invocation of the dictum in Sabu George v. Home Secretary [2007(1) KLT 982]. It is in these circumstances prayed that the composition may be accepted and the verdict of guilty, conviction and sentence may be set aside. It is submitted that the entire compensation amount has already been paid.

3. The learned counsel for the petitioner makes a further submission that he had not received notice in Crl.A.No.2067/2003. There is a prayer that the said judgment may be reviewed inasmuch as the petitioner had not received any notice in the said Criminal Appeal.

4. It is too late in the day for the petitioner to urge that he had not received notice in Crl.A.No.2067/2003. Admittedly notice was given in the leave application and in the application for condonation of delay. It is reported that even in the appeal, notice was served on the party and the party had not chosen to appear.

5. Be that as it may, Annexure A2 judgment clearly shows that the accused/petitioner had been served and in these circumstances their prayer for review is totally unjustified. This

court, sitting as a criminal court of appeal has no inherent powers to review its own judgment even assuming that there is inadequacy in the service of notice. The prayer to review the judgment cannot hence be accepted.

6. What remains is only the prayer for acceptance of composition. The appellate judgment remains unchallenged. The dictum in Sabu George v. Home Secretary [2007(1) KLT 982] is pressed into service. I must carefully note that the dictum in Sabu George v. Home Secretary [2007(1) KLT 982] is not that any and every composition after a verdict of guilty, conviction and sentence has become final can be accepted. The question in Sabu George v. Home Secretary [2007(1) KLT 982] was one of invocation of the extraordinary inherent jurisdiction under Section 482 Cr.P.C. In that case, the accused would have been obliged to undergo a long period of substantive sentence of imprisonment notwithstanding the composition of the offence. It is in that context that this court chose to invoke the powers under Section 482 Cr.P.C. Sabu George v. Home Secretary [2007(1) KLT 982] is certainly not an authority for the proposition that any and every verdict of guilty, conviction and sentence imposed in compoundable offences can be reversed by

acceptance of composition after such verdict of guilty, conviction and sentence have attained finality. In the instant case, the petitioner has to undergo imprisonment till rising of court only. There is a direction to pay compensation and a default sentence also. The direction to pay compensation has already been complied with, it is reported. If that be so, there can be no question of execution of the default sentence. The question has been made crystal clear and the last trace of doubt on this aspect has been set to rest by the decision in Girish v. Muthoot Capital Service (P) Ltd. [2007(1) KLT 16] .

7. I am satisfied that the extraordinary inherent jurisdiction cannot and need not be invoked in this case only to avoid a sentence of imprisonment till rising of court. Satisfactory reasons to invoke such extraordinary inherent jurisdiction are not shown to exist. No failure/miscarriage of justice is likely to result. There will be no abuse of process of this court also if the said substantive sentence of imprisonment till rising of court is executed. I am in these circumstances satisfied that this Criminal Miscellaneous Case cannot be allowed.

8. In the result, this Criminal Miscellaneous Case is dismissed. The petitioner shall have to appear before the

learned Magistrate to undergo the substantive sentence of imprisonment till rising of court. The petitioner and the respondent/complainant can appear before the learned Magistrate and report to the learned Magistrate that the compensation amount has been paid in full. In that event, there will be no question of executing the default sentence in the light of Girish v. Muthoot Capital Service (P) Ltd. [2007(1) KLT 16] .

9. The learned counsel for the petitioner finally submits that a warrant of arrest issued against him is pending. The petitioner is willing to surrender before the learned Magistrate. The execution of the warrant of arrest may be suspended, prays the learned counsel for the petitioner. In the peculiar facts and circumstances of this case, it is directed that the warrant of arrest issued against the petitioner shall not be executed till 8/10/2007. On or before that date, the petitioner shall appear before the learned Magistrate and make his submissions.

Hand over copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007